IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7890 OF 2006

Anil Shankarlal Nigoo ....Petitioner
V/s
Bhau Babu Hajare & Ors... ....Respondents.

Mr.H.K.Vazirani, Adv. For the petitioner.

Mr.A.S.Khandeparkar i/by M/s.Khandeparkar & Associates, Adv. For the respondents.

CORAM: A.P.DESHPANDE, J.
22/8/07

PC:

Leave to amend. Amendment to be carried out forthwith.

The present petitioner Anil is the husband of one Rosy Anil Nigoo. Under an agreement Mrs.Rosy Nigoo has paid a sum of Rs.1,60,000/- to the respondent and on the basis of the said said agreement a suit for specific performance came to be filed after issuing notice. By mistake it is the case of the petitioner that the counsel issued notice for and on behalf of present petitioner Anil Nigoo seeking specific performance of the agreement. As the respondent did not act in accordance with notice the petitioner filed a suit. According to the petitioner it so happened that instead of filing suit in the name of wife Mrs.Rosy through the present petitioner as power of attorney holder a suit came to be filed in the name of husband viz. Present petitioner. The respondent-defendant by filing written statement denied the claim of the present petitioner for specific performance of contract by contending that there is no previty of contract between the petitioner and the respondent and hence the suit cannot be decreed. Realizing the mistake belatedly the petitioner filed

an application at Exh.19 in the suit with a view to amend the cause title. What is prayed for is that the name of the plaintiff should read as Mrs.Rosy Anil Nigoo. The application was opposed and the trial Court has rejected the application by holding that an accrued right in favour of the defendant shall be defeated. It is the matter of record that the agreement has been executed in between Mrs.Rosy Anil Nagoo and defendant. It is obvious that the plaintiff being the husband has played vital role in striking the deal between the parties. The suit has been filed obviously in wrong name. If the amendment is not allowed the suit is bound to be dismissed causing irreparable loss, hardship and inconvenience to the plaintiff. Allowing the amendment application and permitting a formal defect to be corrected would advance cause of justice. The plaintiff thereafter moved another application at Ex.27 seeking review of the order passed by the trial Court rejecting the application at Ex.19 viz. the order dated 13.7.05. One more application came to be filed by the plaintiff at Ex.29 seeking addition of Mrs.Rosy Anil Nagoo as party to the suit. The review application so also application at Ex.29 came to be rejected by an order dated 28.6.06. Aggrieved by the said three orders the present writ petition has been filed. It is obvious that if the impugned order dated 13.7.05 is quashed set aside no interference with the order passed on 28.6.06 is called for. The purpose behind moving all these applications is to bring on record the name of the real person who has entered into agreement for purchase of property and the person is wife of the present petitioner Rosy. The trial Court has committed a patent illegality in rejecting the application seeking amendment in the cause title of the plaint by defining the plaintiff as Mrs.Rosy Anil Nagoo through the power of attorney holder her husband Anil Nagoo the present petitioner-original plaintiff. The petitioner no doubt is guilty of latches. The plaintiff has

not been diligent enough. However for the said reasons respondent can be compensated in terms of money. In the result writ petition is allowed. The impugned order below Ex.19 dated 13.7.05 is quashed and set aside. The amendment sought by the petitioner in the plaint is allowed. As order dated 13.7.05 is quashed and set aside the challenge to the order dated 28.6.06 has become infructuous and hence not pressed by the learned counsel for the petitioner. Rule made absolute in above terms subject to payment of costs of Rs.5000/- to be paid by the plaintiff to the defendant by depositing the same in the trial Court within four weeks from today. As the petitioner is permitted to amend the plaint the respondent is granted permission to carry out consequential amendment in the written statement.

22.8.07